PRESIDENT: Order, order. It is likely that the official business might be finished in the course of to-day. I should like to take the opinion of the House as to whether they would have any objection to advance the non-official day to Monday. As no one seems to have any objection, the non-official day is advanced to Monday. In that case, the ballotting of resolutions originally fixed to take place on Monday will be held to-day. The election of three members to the Committee announced yesterday will take place after the regular business of the Assembly is over. That election will be by and from amongst the non-official members of the Assembly. In regard to the number of members to be elected to various Select Committees and the handing over the list of the names of members to the Secretary there has been some laxity. Also the numbers have been very large. I hope honourable members who are in charge of the task of announcing the names of the members to the Select Committees will keep that in mind, because we now find unmanageably large numbers on Select Committees.

MR. KAINIKKARA M. PADMANABHA PILLAI: When will the elections take place to-day?

PRESIDENT: Immediately after the business of the day is over.

MR. K. P. KOCHUKORA THARAKAN: ഇങ്ങിനെ ആയാൽ റസല്യൂഷൻ മൂവ് ചെയ്യാൻ സാധിക്കുമെന്നു തോന്നുന്നില്ല. അതുകൊണ്ട് അതി ലേയ്ക്ക് ഒരു ദിവസം വച്ചാൽ കൊള്ളാം.

PRESIDENT: Is it expected that the Child Marriage Bill will take all the time on Monday?

MR. KAINIKKARA M. PADMANABHA PILLAI: Judging from past experience, it might take perhaps more than a day.

PRESIDENT: I am fully aware that the non-official resolutions have got some claims on Government and therefore after seeing how the Child Marriage Bill gets along on Monday—I find that it is likely to take up the whole day—I am perfectly willing, subject to what the honourable House may say, to extend the non-official business by a day. But I do hope that the Child Marriage Bill will be expeditiously dealt with.

LEGISLATIVE BUSINESS.

THE TRAVANCORE EQUITABLE MORTGAGE BILL— (*contd.*)

PRESIDENT: The motion before tha House is that the Equitable Mortgage Bill may be taken into consideration.

MR. J. E. A. PEREIRA (*Commerce and Industry, South*): Sir, I beg to move for the recommittal of the Bill. I do so with a full sense of responsibility. In the first place, it may seem strange that a business-man like myself should suggest this. As a person engaged in business

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for the last many years, I believe that it will be conceded that I am entitled to have some say in the matter. This is a piece of Legislation which is suitable to places where commerce has been highly organised Under such conditions this Bill will be thrice welcome. The question is, how does it fit in with the prevailing conditions in Travancore? It is no argument to say that simply because the Bill obtains currency elsewhere it should be imported wholesale in as much as what is meat for one person may be poison for another. On the reading of the Bill, one is likely to make a wrong approach with the false premise that when two parties in commerce first meet, it is essential to have a security in the form of mortgage for establishing credit. As a matter of fact, this is not so. Let me illustrate it. Credit is essential for the trade and trade runs on credit. Let me explain the mechanism of credit. Suppose a retail dealer who owns Rs. 20,000 worth of property approaches a wholesale dealer and asks for credit for Rs. 2,000 and if the wholesale dealer insists on a security the retail dealer will flee back in search of another party who will have better regard for him.

As long as such a retail dealer does not approach further parties for similar credits all goes well. Even when he approaches more than one creditor, things continue to go well until his business moves go wrong or he ventures beyond his means. Then only the trouble starts.

When a shrewd creditor smells a state of matters, he can press for an equitable mortgage and if the debtor creates an equitable mortgage in favour of the creditor who presses him what happens to his other creditors? As matters stand at present, and if the debtor creates a registered mortgage, it is known to the other creditors, whereas if an equitable mortgage is made, the other creditors have no chance of knowing it and they will be placed in a sad plight and will be left in the lurch or a debtor himself may single out a credtior for favourable treatment. When this is done, what will be the fate of the other creditors? It will thus be seen that the need for mortgage does not arise in the beginning of the commercial career of a person but only at the subsequent stage when things go wrong. This is the most important point to be noted.

An hypothetical case of ideal use is as follows:—When a trader owning Rs. 20,000 worth of property owes to 5 or 6 parties Rs. 10,000 in all, feels that it is high time pulls up himself with a view to prevent further debt, goes to a bank and creates an equitable mortgage on his property for Rs. 10,000 settles all his 5 or 6 creditors, but in this world how many such ideal examples could be found? When man is in affluent circumstances, all goes well. The trouble starts when he gets into straitened circumstances. In normal conditions, one would not think of departing from the ideal. It is only when a man gets into straitened circumstances and out of sheer desperation, he is driven to do things which he would not think of doing under normal circumstances. I am reminded of the dictum of Carlyle when he said "on half the rations you will be as knavish as anybody else, so do not mistake potatoes for principles". Under such circumstances, ever so many

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[Mr. J. E. A. Pereira.]

things are possible. I find that the Select Committee has made a suggestion which was not favoured by the majority. The mistake is that they have suggested a remedy that takes away the wholesome provision of the Equitable Mortgage Bill viz, secrecy and speediness when the suggestion contained swearing in before Stipendiary Magistrate, etc. Speaking about the Select Committee I must say that the Legal Remembrancer has got the knack of avoiding most suitable elements from various committees.

PRESIDENT: Order, order. The honourable member need not sit in judgment, post mortem.

MR. J. E. A. PEREIRA: I am sorry, Sir and I withdraw my remarks.

As I was saying, the remedy suggested by the Select Committee eats away the wholesome provisions in the Bill. I also find that none of the amendments proposed in the Bill is satisfactory when analysed in the light of my remarks. Of all the amendments the one I like best is that of Mr. Jebamony Nadar but even that does not satisfy the case where a debtor singles out for favourable treatment one creditor alone.

Coming to the title, Sir, the ownership of land under the Nayar tarward is such a complicated matter that it would not be possible even for an unrivalled eminent jurist as my respected friend, Mr. E Subramonia Aiyar to say that Title in majority of the cases is A1 and unassailable. When such is the conditions, what guarantee is there that the Title under the equitable mortgage is perfect? By the time you take to ascertain this, all the secrecy will be lost and you might as well get a written registered mortgage.

MR. T. C. KESAVA PILLAI: I question the validity of his statement.

MR. J. E. A. PEREIRA: I don't yield in, Sir. I am in possession of the floor. I am prepared to answer him in the end.

Looking at this stand-point of view of Title, the bill is unsatisfactory and I am tempted to move for the total rejection but I would rather prefer for a recommittal to a Select Committee consisting of seasoned business persons like Mr. S. Krishna Aiyar, Mr. Karayalar and others, so that all aspects may be threshed out.

MR. T. C. KESAVA PILLAI: On a point of order, the observations made by the honourable member regarding the conduct of members especially the Legal Remembrancer is objectionable and I pray that he should be asked to withdraw his statement.

PRESIDENT: It is not a point of order. The honourable member's point apparently is that if a man of the type he has indicated sat on the Bill, a more business-like Bill will be forthcoming but it is possible to deal with the matter without singling out names which would be embarassing to those and to others not in the list.

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MR. J. E. A. PEREIRA: I beg to be excused. Nothing was farther from my mind than to cast the least kind of reflection on any honourable member of this House.

All considered, the Bill as it stands now does not fit in with existing conditions and I move for the re-committal of the Bill to a fresh select committee.

MR N. RAMAKRISHNA PILLAI (*Vaikam* cum *Kottayam*): I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI: (*Legal Remembrancer to Government*): The motion must be one according to Standing Order No. 41. It must be made more specific so that I may be in a position to reply.

PRESIDENT: In other words you want to know whether it is to be recommitted to the same Committee or to another Committee.

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, Sir.

MR. J. E. A. PEREIRA: Sir, I could not follow.

PRESIDENT: Is it the intention of the honourable member in moving this amendment that the Bill be recommitted to the same Select Committee or to a Select Committee composed of other individuals?

MR. J. E. A. PEREIRA: I leave it to your discretion, Sir.

PRESIDENT: No, no. A motion has to be made.

MR. J. E A. PEREIRA: To a fresh committee.

MR. PUTHUPALLY S. KRISHNA PILLAI: Government have no objection to the recommittal of the Bill to that Committee or to any other Committee. They would keep neutral in that matter. The decision is left to the House.

PRESIDENT: As the Legal Remembrancer has just now stated Government have no objection to have the matter further considered. That the bringing into existance of this system of equitable mortgage is, no doubt, an experiment and that there are many difficulties attendant on the experiment on account of the number of tenures and the complicated nature of the tenures in this country goes without saying. The reason underlying this project of legislation was to facilitate commercial transactions. The honourable member Mr. Pereira who spoke just now took one case. Let me think of another case. A certain person has dealings with a commercial personage or a banker. He goes on drawing funds for a particular business or venture of his. So long as the borrower is satisfied that the person is in a completely solvent position and able to repay the amount borrowed without difficulty, he may allow such borrowing. But a time may come when he may say. "I am not willing to lend to you any more. You have got a factory You want to extend it. I am not going to give you Rs. 1,000 or

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[President.]

Rs. 10,000 more to extend the factory unless you put the factory in equitable mortgage with me. Very often it happens in commercial transactions that the very fact that he enters into a registered mortgage itself is considered a proof of the shaky financial position of the venture. In England and in the Presidency towns of Madras, Bombay, Calcutta, Karachi and certain other places it has been considered expedient to bring into existence legislation whereby you may legalise the transactions either for a temporary overdraft or for an advance without elaborate formality and undue publicity. An arrangement of that kind is called an equitable mortgage. But that involves two assumptions. Generally, in Europe and in the Indian Presidency towns, the possession of title deeds is regarded as important. Therefore if a person wants to borrow money he goes to the creditor and shows him the title deed and if the original title deeds are not forthcoming and are not considered satisfactory the loan is not generally granted. It may be that in certain systems the idea of title deeds have not evolved to that extent and the importance of title deeds may not be recognised and their possession may not be regarded. Similarly in England, until lately there was no system of registration at all. All that counted was the title deed. If there was an original muniment of title, its handing over was equivalent to the creation of a mortgage which was recognised under certain conditions by the Courts of equity. The system depends for its efficacy and convenience on the system of possession and transfer of title deeds. It may be that honourable members may think that there are special difficulties attendant on the scrutiny of such deeds here or the title may not depend on such deeds or there may be other local difficulties. If the House wants further time and it is suggested that the consideration of this Bill should be postponed there can be no objection. But at the same time it must be remembered that this system where it has been worked has been of the greatest value to commercial men in the matter of immediate advances. The question is whether we want such transactions, whether any special safeguards are needed having regard to the special circumstances obtaining in Travancore. If the honourable members are of the opinion that more time should be devoted to the Bill and that it should be considered by this Committee or a fresh Committee the matter will be left entirely to the discretion of this honourable House.

The motion before the House is that this Bill be recommitted to a fresh Select Committee. It has been duly proposed and seconded.

(The motion was put and carried.)

The honourable member will propose the members of the Committee.

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MR. J. E. A. PEREIRA: I propose the following members:—

1. Mr. S. Krishna Iyer,
2. ,, S. Chattanatha Karayalar,
3. ,, K. C. Karunakaran,
4. ,, K. P. Kochukora Tharakan,
5. ,, Kainikara M. Padmanabha Pillai,
6. ,, K. G. Kunjukrishna Pillai,
7. ,, Puthupally S. Krishna Pillai,
8. ,, E. Subramonia Aiyar, and
9. ,, J. E. A. Pereira.

MR. T. C. KESAVA PILLAI: I propose the name of Mr. M. Sivathanu Pillai.

PRESIDENT: The motion before the House is that the names of the honourable members which have been announced should be accepted as members of this new Committee.

The motion was put and carried, and the Bill recommitted to a Select Committee consisting of the following gentlemen:

1. Mr. S. Krishna Iyer,
2. ,, S. Chattanatha Karayalar,
3. ,, K. C. Karunakaran,
4. ,, K. P. Kochukora Tharakan,
5. ,, Kainikara M. Padmanabha Pillai,
6. ,, K. G. Kunjukrishna Pillai,
7. ,, Puthupally S. Krishna Pillai,
8. ,, E. Subramonia Aiyar,
9. ,, M. Sivathanu Pillai, and
10. ,, J. E. A. Pereira.

RULES UNDER THE CIVIL PROCEDURE CODE.

MR. PUTHUPALLI S. KRISHNA PILLAI: This House has now to take up the proposal to amend the rules under the Civil Procedure Code. Last time when this House met the motion was made that the rules as reported by the High Court and published in the Government Gazette be taken into consideration. The motion was adopted but at the request of some members the consideration of that matter was postponed. We have to resume the consideration.

Orders I to III.

PRESIDENT: The question before the House is that in the rules under the Civil Procedure Code Orders 1 to 3—

MR. PUTHUPALLI S. KRISHNA PILLAI: No proposal has been made to alter Orders 1 to 3.

Order IV.

PRESIDENT: That is what I was going to say. The question is that Order 4 Rule 1 do stand part of the Rules.

MR. P. NARAYANA PILLAI (*Mavelikara cum Kunnattur*): I move that in Order IV, Rule 1, delete sub-rule (1). I think that the amendment brought by the Legal Remembrancer is quite un-necessary. This

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